

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
(Metra)

NMB Case No. 10

This case involves Mr. W. Marusiak who is employed by Metra as a Machine Operator.

On September 28, 2001, Mr. Marusiak was sent a Certified U.S. Mail letter instructing him to attend a formal investigation on October 4, 2001, for the purpose of developing facts, determine the cause and assess responsibility, if any: in connection with his alleged carelessness while operating a company machine on September 19, 2001, which allegedly resulted in damage to a bicycle rack while backing up the machine.

Mr. Marusiak was charged with alleged violation of Metra Employee Conduct Rules; Rule L, Rule N – Item 1 and GCOR Rule; Rule 1.1.2.

The letter of September 28, 2001, is attached to this Award.

Following the investigation, Mr. Marusiak received a letter dated October 22, 2001, advising that he had been assessed discipline of Three (3) days deferred suspension.

The letter of October 22, 2001, is attached to this Award.

The transcript of the investigation held on October 4, 2001, provides the basis for this Board's adjudication of this dispute.

This dispute is before this Special Board of Adjustment established by agreement between the Brotherhood of Maintenance of Way Employees and the Northeast Illinois

Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

FINDINGS:

In the investigation transcript, the Organization questioned the time frame for the handling of the case before us.

We have reviewed the file, the dates and the applicable agreement rules for procedure and find no basis for the Organization's charge. There were no procedural defects in the handling of the dispute on the property. Accordingly, our decision will be based on the merits of the case.

Mr. Marusiak was charged with violation of Metra Employee Conduct Rules; Rule L, Rule N – Item 1 and GCOR Rule; Rule 1. 1.2. Following the investigation, he was disciplined for violation of those rules by being careless operating a company machine on September 19, 2001, which resulted in damage to a bicycle rack. The incident occurred while Mr. Marusiak was operating his machine in unloading headers from a truck and placing them between a building (shelter) and bicycle racks.

The location where they were being placed had tight tolerances for space and required skill and careful maneuvering to get them in place.

According to the testimony in the record, it appears that the incident occurred when unloading the first header from the truck.

The Foreman in charge of the operation was Mr. Kurt Atero.

The record reveals that there was discussion between Foreman Atero and Mr. Marusiak, the machine operator, as to the site on which the headers were to be placed because of the tight tolerances that had to be dealt with in placing them.

The record shows that Foreman Atero made the decision to place them at the location site.

The testimony in the record reveals that there were several other employees at the work site engaged in the unloading process.

In our review of the transcript testimony, it is evident that there was a difference of opinion between Mr. Marusiak and Mr. Atero as to the choice of location for unloading the headers. However, Mr. Atero made the decision and they proceeded accordingly. It would appear that having made that decision with the knowledge that there were tight tolerances involved, that special attention and guidance from others on the ground should have been given so as to assist the operator of the machine who has limited vision in different directions. There is no evidence in the record that such assistance was given Mr. Marusiak. While the machine operator is responsible for the operation of the machine, it is evident in this case that Mr. Marusiak followed orders given by the Foreman, even though he was concerned about the tight tolerances that confronted him.

There is no evidence in the record that Mr. Marusiak's actions were careless or inconsiderate of his own safety and the safety of others. Mr. Marusiak had the presence of mind to suggest a different approach to his Foreman who was in charge of the operation, however, that suggestion was not followed. The fact that in unloading the first header the machine struck a bicycle rack and bent it a little causing minimal damage most certainly cannot be attributed to carelessness.

In fact, in Foreman Atero's testimony, he stated that in his opinion the bicycle rack was not hit too bad and was barely bumped and bent over.

After careful consideration of all of the facts and testimony contained in the investigation transcript, we cannot find support or justification for any disciplinary action against Mr. Marusiak.

Accordingly, it is our decision that the letter of October 22, 2001, and the Three (3) days deferred suspension be rescinded and removed from Mr. Murasiak's personal work record.

AWARD:

Claim sustained.



Charles J. Chamberlain
Neutral Member

Date December 17, 2001

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

REVISED NOTICE OF INVESTIGATION

September 28, 2001

FIRST CLASS MAIL & CERTIFIED MAIL

Mr. W. Marusiak, Machine Operator, R1 CB, #6608

You are hereby instructed to attend a formal investigation which will be held in the office of the Director of Engineering, Milwaukee District, 2931 W. Chicago Ave, Chicago, Illinois 60622, Thursday, October 4, 2001 at 1:00 P.M.

The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, **if any**, in connection with your alleged carelessness while operating a company machine on September 19, 2001, which allegedly resulted in damage to a bicycle rack while you were backing up the company machine.

In connection, therewith, you are charged with the alleged violation of the following Metra Employee Conduct Rules; **Rule L**, **Rule N -Item 1** and GCOR Rule; **Rule 1.1.2**.

--LALOR REL--

Rule L - Constant presence of mind to insure safety to themselves and others is the primary duty of all employees and they must exercise care to avoid injury to themselves or others.

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Rule N - Item 1 - Employees must not be careless of the safety of themselves and others,

Rule 1.1.2 -Alert and Attentive

Your personal work record will be reviewed at this investigation. (Copy attached)

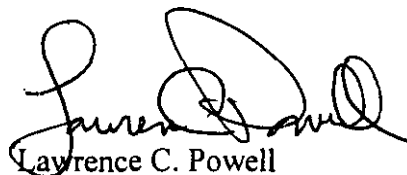
You may be represented at this investigation as provided for in your labor agreement. Your representative will be given the opportunity to present evidence and testimony in your behalf and to cross-examine any witnesses testifying against you.

G/C BMWE
L/C BMWE

V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
c. Cary

C. Otero----- Please arrange to appear as a company witness

E. Deackman--- Please arrange to appear as a company witness



Lawrence C. Powell
General Bridge & Building Supervisor-Capital

SBA 1122
Rwd 10

NORTHEAST ILLINOIS RAILROAD CORPORATION

**Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois, 60622**

Results of Investigation

CERTIFIED MAIL

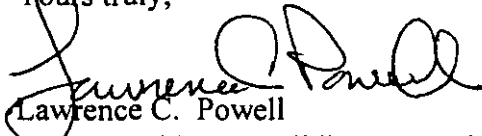
Mr. W. Marusiak, Machine Operator R1 CB, #6608

October 22, 2001

A review of the transcripts of **the investigation**, held on October 4, 2001, has resulted in the following discipline being issued: **Three (3) days deferred suspension.**

The assessment of the above discipline will be placed on your record as outlined in the progressive discipline policy.

Yours truly,



Lawrence C. Powell
General Bridge & Building Supervisor, Capital
(312) 322-4118

LCP/tmc

cc: G/C-BMWE
L/C-BMWE
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary

-LABOR REL--

4 OCT 01 7:34

NOTICE OF DISCIPLINE

Walter Marusiak

Roselle

Lawrence C. Powell .

Employee Name

Work Location

Supervisor assessing discipline

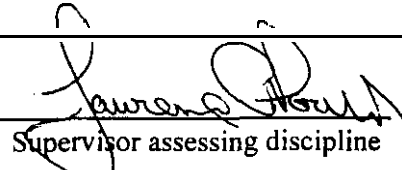
DATE: October 22, 2001**X FORMAL INVESTIGATION
HELD ON OCTOBER 4, 2001****WAIVER OF INVESTIGATION**

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules; **Rule L, Rule N, Item 1 and GCOR Rule 1.1.2**, when you were careless operating a company machine on September 19, 2001 which resulted in damage to a bicycle rack while you were backing up the company machine. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<u>Formal</u>	<u>Waiver</u>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
X 2. Three (3) work days deferred suspension	2. One (1) work day deferred suspension
3. Five (5) work days suspension plus the deferred days from step two (2)	3. Three (3) work days suspension plus the deferred days from step two (2)
<p>Your record indicates a deferred suspension of ____ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above.</p> <p>As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.</p>	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
<p>As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.</p>	
5. Dismissal	5. Dismissal
<p>Your employment with this Corporation is terminated effective _____. You must return all company property.</p>	

Employee

Union Witness


 Supervisor assessing discipline

cc: Metra Personnel